

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

State of Oklahoma, et al.,)	
)	
Plaintiffs,)	Civil No. 05-CV-0329 GKF-SAJ
)	
v.)	
)	
Tyson Foods, Inc., et al.,)	
)	
Defendants.)	
)	

DEFENDANTS' TRIAL BRIEF FOR
HEARING ON MOTION FOR PRELIMINARY INJUNCTION

Defendants submit the following trial brief for the Court's consideration in connection with Plaintiffs' motion for preliminary injunction.

Plaintiffs have moved for a preliminary injunction under 42 U.S.C. § 6972(a), seeking to enjoin each Defendant from:

(1) applying poultry waste to any land within the [IRW] and (2) allowing the application of poultry waste generated at its respective poultry feeding operations and/or the application of poultry waste generated at its respective poultry feeding operations under contract with it to any land within the IRW.

Dkt. No. 1373, at 10, 24. To establish entitlement to this mandatory preliminary injunction as to any specific Defendant, Plaintiffs must establish that the answer to each of the following questions is "Yes" as to that Defendant.¹

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¹ See Defendants' Memorandum In Opposition To Plaintiffs' Motion For Preliminary Injunction [Dkt. No. 1531] at 26-29.

Because Plaintiffs seek a preliminary injunction that: (1) alters the status quo; (2) is mandatory rather than prohibitory; and (3) provides nearly all the relief Plaintiffs could secure after trial, the Court must scrutinize the proof on each of these elements more closely than it would for a standard injunction.

See Defendants' Memorandum In Opposition To Plaintiffs' Motion For Preliminary Injunction [Dkt. No. 1531] at 2-4; Defendant Peterson Farms, Inc.'s Separate Response To State Of Oklahoma's Motion For Preliminary Injunction [Dkt. No. 1532] at 4-6.

1. Have Plaintiffs proven that the Defendant (a) land-applies poultry litter as fertilizer or soil amendment in the IRW or (b) controls the actions of others with regard to land-applying litter in the IRW??

See The Cargill Defendants' Separate Response To Plaintiffs' Motion For Preliminary Injunction [Dkt. 1533] at 1-7; Defendant Peterson Farms, Inc.'s Separate Response To State Of Oklahoma's Motion For Preliminary Injunction [Dkt. No. 1532] at 6-17.

2. (a) Have Congress and the EPA excluded animal manures from RCRA's definition of "solid waste?"

See Defendants' Memorandum In Opposition To Plaintiffs' Motion For Preliminary Injunction [Dkt. No. 1531] at 4-7.

[OR]

2. (b) If the Court concludes that Congress and the EPA have not excluded animal manures from RCRA's definition of "solid waste" as a matter of law, have Plaintiffs proven that the poultry litter land-applied as fertilizer or soil conditioner is a "solid waste" under RCRA?

See Defendants' Memorandum In Opposition To Plaintiffs' Motion For Preliminary Injunction [Dkt. No. 1531] at 7-13.

3. Have Plaintiffs proven that land application of that poultry litter as fertilizer or soil conditioner in the IRW constitutes an “imminent and substantial endangerment to health or the environment”? 42 U.S.C. § 6972(s)(1)(B).

See Defendants’ Memorandum In Opposition To Plaintiffs’ Motion For Preliminary Injunction [Dkt. No. 1531] at 13-18, 29-37.

4. Have Plaintiffs proven that the Defendant “contribut[es] to” the “past or present handling, storage, treatment, transportation, or disposal” of a solid waste? 42 U.S.C. § 6972(a)(1)(B).

See Defendants’ Memorandum In Opposition To Plaintiffs’ Motion For Preliminary Injunction [Dkt. No. 1531] at 18-37.

5. Have Plaintiffs established that the Defendant’s conduct will cause an “irreparable harm in the absence of an injunction”?

See Defendants’ Memorandum In Opposition To Plaintiffs’ Motion For Preliminary Injunction [Dkt. No. 1531] at 37-42.

6. Have Plaintiffs proved that the threatened harm from that Defendant’s conduct outweighs the injury to the Defendant and others that the injunction will cause?

See Defendants’ Memorandum In Opposition To Plaintiffs’ Motion For Preliminary Injunction [Dkt. No. 1531] at 42-44.

7. Have Plaintiffs proved that the injunction they seek against that Defendant is in the public interest?

See Defendants’ Memorandum In Opposition To Plaintiffs’ Motion For Preliminary Injunction [Dkt. No. 1531] at 45-48.

8. Have Plaintiffs established that there is no other means available short of the proposed injunction to remedy the claimed imminent and substantial endangerment to human health?

See Defendants' Memorandum In Opposition To Plaintiffs' Motion For Preliminary Injunction [Dkt. No. 1531] at 40-42, 44-47; Defendants George's, Inc. And George's Farms, Inc.'s Separate Response Brief In Opposition To Plaintiff's Motion For Preliminary Injunction [Dkt. No. 1530] at 4-14.

9. Have Plaintiffs established that the injunction they seek against all the Defendants will be effective in eliminating the claimed irreparable harm?

See Defendants' Memorandum In Opposition To Plaintiffs' Motion For Preliminary Injunction [Dkt. No. 1531] at 39-40.

10. Have Plaintiffs established that the injunction they seek against that Defendant is no more extensive than is necessary to eliminate the irreparable injury (if any) caused by that Defendant?

See Defendants' Memorandum In Opposition To Plaintiffs' Motion For Preliminary Injunction [Dkt. No. 1531] at 26-28.

11. If the Court were to conclude that preliminary injunctive relief of some type were appropriate, what bond must Plaintiffs post to secure against Defendants' damages should Plaintiffs fail to prevail at trial on their RCRA claim?

The Cargill Defendants' Separate Response To Plaintiffs' Motion For Preliminary Injunction [Dkt. No. 1533] at 7-9.

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I certify that on the 15th day of February, 2008, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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